

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's) RM-8577
Rules to Preempt State and Local)
Regulation of Tower Siting For)
Commercial Mobile Services Providers)

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS IN SUPPORT OF
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION'S
PETITION FOR RULE MAKING

Pacific Telecom Cellular, Inc. ("PTC"), pursuant to Section 1.405(a) of the Federal Communications Commission's rules and regulations, submits its comments in support of a petition by the Cellular Telecommunications Industry Association ("CTIA") which requests that the Commission initiate a rule making and propose federal preemption of state and local tower site regulation. Various subsidiaries and affiliates of PTC hold cellular system licenses in Rural Service Areas and smaller sized Metropolitan Statistical Areas.^{1/}

In the course of construction and improvement of cellular

^{1/} Cellular systems licensed to and controlled by PTC's subsidiaries and affiliates serve Rural Service Areas in Alaska, Wisconsin and Michigan, and the Appleton and Eau Claire MSAs in Wisconsin. PTC also serves as manager of several RSA cellular systems in Minnesota and Wisconsin. PTC is controlled by Pacific Telecom, Inc., a Washington corporation and telecommunications holding company.

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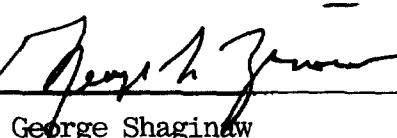
systems, PTC has encountered an assortment of local zoning obstacles which have impeded the offering of cellular service to the public. Several examples of such problems are summarized in an attachment to these comments. These and similar encounters with local zoning officials have delayed cellular service availability, and in the future may be expected to delay competitive service offerings to the public.

PTC requests that the Commission grant the CTIA petition, and issue a Notice of Proposed Rule Making at the earliest possible date. The Commission should propose to preempt state and local zoning and other tower site regulations. Such action is necessary if the public is to realize the potential of competitive nationwide wireless services.

Respectfully submitted,

PACIFIC TELECOM CELLULAR, INC.

By:



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February 17, 1995

All the following examples pertain to requests for permits to construct towers for cellular base station transmitter sites.

1. Location: Mankato Township, Blue Earth County, Minnesota

Date: June, 1991

Zoning Entity: Mankato Township

Nature of Request: Conditional Use Permit

Action Taken: Application Denied

Resulting Effect: Construction of tower delayed for over two years. Delayed provision of fully competitive cellular service in the area.

Comments: The Township Board concluded that a communications tower was not listed as a permitted or conditional use. However, in May of 1991 this same township board approved a conditional use permit for a similar tower to be built by the cellular competitor. Legal action was initiated after this permit application was denied, eventually resulting in a favorable judgement and issuance of the conditional use permit.

2. Location: Yellow Medicine County, Minnesota

Date: January, 1992

Zoning Entity: County Zoning Committee, County Board

Nature of Request: Conditional Use Permit

Action Taken: Application Denied

Resulting Effect: Had to construct site in another county. Provision of initial cellular service to the public delayed over five months; resulting coverage area less extensive than originally planned.

Comments: County decided that towers were not a 'permitted use' anywhere in areas zoned agricultural throughout the county. Nearly all of the county is agricultural land. A zoning variance application was denied.

3. Location: Langlade County, Wisconsin

Date: May, 1992

Zoning Entity: Langlade County Water And Land Use Committee

Nature of Request: Rezone from Agriculture to Forestry

Action Taken: Application Denied

Resulting Effect: Delayed provision of competitive cellular service to southern Langlade County for over a year, and resulted in coverage area less extensive than originally planned.

Comments: The County Zoning Ordinance prohibits structures greater than 35 feet in height without approval of a variance. The proposed tower had received FAA approval and met Wisconsin Department of Transportation structure height requirements. An official of the Bureau of Aeronautics of the Wisconsin Department of Transportation appeared and spoke in opposition to the application, even though he agreed that its height met State aeronautical requirements.

4. Location: Southern Part of Bayfield County, Wisconsin

Date: February, 1994

Zoning Entity: Bayfield County Zoning Committee

Nature of Request: Conditional Use Permit

Action Taken: Application Denied

Resulting Effect: Provision of initial cellular service to the public delayed two months.

Comments: Township Board had approved application prior to Zoning Committee decision. After permit denied by Zoning Committee, an appeal was filed with the Bayfield County Administrative Board, which eventually resulted in issuance of the requested permit.

5. Location: Northern Part of Bayfield County, Wisconsin

Date: March, 1994

Zoning Entity: Bayfield County Zoning Committee

Nature of Request: Conditional Use Permit

Action Taken: Application Denied

Resulting Effect: Provision of initial cellular service to the public delayed four months; coverage area less extensive than originally planned.

Comments: Various people expressed opposition to the proposed tower, including objection to the visual aspects of all towers, and health hazards associated with cellular and microwave radio systems. A new location was eventually proposed. The Zoning Committee imposed several unique conditions on approval of the permit, including that the permit would be valid for only 10 years, at which time a new application must be made and a public hearing must be held; that if the tower is to be used for microwave transmission, a new application must be made, and a public hearing will be required; and that if the tower is sold, the new owner must submit a new application before the operation of the tower commences under the new ownership.

6. Location: Dodge County, Wisconsin

Date: February, 1994

Zoning Entity: Dodge County Planning Commission

Nature of Request: Request for Subdivisional Permit

Action Taken: Application Approved

Resulting Effect: Provision of initial cellular service to the public delayed four months.

Comments: A proposal for the tower construction project was reviewed with the township in which the site was located. The Town Board gave their approval to the project. The County Zoning Administrator initially indicated that no permit was required from the County. The Wisconsin Department of Natural Resources inquired about the project, and expressed their displeasure with it. A short time afterward the County changed its position and said that a subdivisional permit would be required, as though there were to be a number of housing lots developed.

CERTIFICATE OF SERVICE

I, R. Loren Bradon, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 17th day of February 1995 sent by first class United States mail, copies of the foregoing COMMENTS IN SUPPORT OF CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION'S PETITION FOR RULE MAKING to the following:

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